

COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NATINITAL.

Appeal from Order No. 53 of 2001
(Old No. 1208/1993)

Anantram Pasupalak
And others **Appellants.**

Versus

New India Assurance Co. Ltd.
and another. ... **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award dated 7-9-1993 passed in M.A.C.T. Case No. 22 of 1991, Anant Ram Pasupalak and others Vs. New India Assurance Company Ltd. and another, by Motor Accident claims Tribunal Chamoli at Gopeshwar (*in short the Tribunal*), whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 40,000/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of the claimant Nos. 1 to 4-appellant no.1 to 4 under Section 166 of the Act. Aggrieved, the claimant-appellants have come up in appeal for enhancement of quantum of compensation on the ground that the learned Tribunal has failed to appreciate the evidence and the findings of the learned Tribunal are erroneous.

Brief facts, giving rise to the present appeal, are that on 18.9.90 one Smt. Chandrawati Pasupalak, along with her husband and son and others, was travelling from Hardwar to Badrinath Dham by bus bearing registration No. UTS-1091. When at about 2 p.m., the bus reached near Ratoli about 4,1/2 Kms. from Rudraprayag on Srinagar-Rudraprayag road, it met with an accident on account of rash and negligent driving by its driver, with the

result said Smt. Chandrawati Pasupalak sustained grievous injuries and succumbed to her injuries, and her son Brundabana Pasupalak too met with the same fate. The deceased was aged 55 years and she left behind the claimants as legal heirs. The bus driver has committed violation of traffic rules. F.I.R. of this accident was lodged with Police Station Rudraprayag at Crime No. 25/90 Under Sections 279, 337, 304-A I.P.C. It is alleged in the petition that the deceased was earning Rs. 8000/- per month from the business of wholesale vegetables. Claimant no.1 being the husband and claimants no. 2 to 4 being her sons and daughters have filed the present claim petition for compensation of Rs. 2,35,000/- on account of death of the deceased Smt. Chandrawati.

Opposite Party No.1-respondent no.1 filed written statement and contested the case. The Insurance Company has pleaded that the claim petition has been filed with wrong facts and suffers from defects of proper signing and verification. It was also alleged that the bus in question was carrying more passenger than the authorised capacity. It was alleged that deceased was not having any income of his own. It is also alleged that under the orders of the State of U.P. a compensation of Rs. 20,000/- has been paid. The jurisdiction of the court has been challenged on the ground that the accident took place in district Pauri, therefore, the claim petition is not maintainable for want of jurisdiction. It has also been pleaded that since the owner of the bus has violated terms and conditions of permit and policy, therefore, the answering opposite party is not liable to pay compensation.

The O.P.-respondent no.2 Ram Lal Batra, owner of the offending bus, filed his written statement and contested the case. It has been stated that the bus was duly insured with the O.P.-respondent no.1 on the date of accident. It is also pleaded that the bus was being used for the purpose covered by the permit and the driver was holding a valid driving licence. It has been further alleged that the accident in question was not the result of rash and negligent driving by the bus driver, but the accident occurred while

giving pass to a vehicle coming from the opposite direction with the result the bus fell down into a ***Khadd***, therefore, the liability to pay compensation rests on the Insurance Company.

On the pleadings of the parties, the learned Tribunal framed as many as **five Issues** in the case. **Issue No.1** related to rash and negligent driving by the driver of the alleged bus. **Issue no. 2** related to travelling of the deceased by the bus in question. **Issue No. 3** related to plea of overloading of the bus by the Insurance Company- O.P. No.1. **Issue No. 4 and 5** related to the relief sought in the claim petition.

Before the learned Tribunal, both the parties filed documentary evidence. The claimants have adduced in oral evidence two witnesses, namely, Simanchala Pasualak as P.W. 1 and Nitya Nand as P.W 2, but the Opposite Parties have not led any oral evidence. After hearing both the parties and considering the evidence before it, the learned Tribunal took Issue No.1 for decision. It came to the conclusion that it was the rash and negligence on the part of the driver of the bus, due to which the said motor accident took place and accordingly decided the issue no.1 in favour of the appellant-claimants. On Issue No.2, the learned Tribunal was of the view that it was proved on record on that the deceased was travelling by the ill-fated bus on the date of accident. On Issue No.3, the learned Tribunal found that the liability to pay compensation rests on the Insurance Company and decided the Issue accordingly. The Tribunal took Issue Nos. 4 and 5 together for disposal. After considering the material available before it, the learned Tribunal after considering the Post Mortem Report found that the age of the deceased was 65 years at the time of accident.

As regards monthly income of the deceased, the learned Tribunal held that the deceased Chandrawati was a household lady and she had no monthly income and accordingly, the Tribunal has held that due to the death of the deceased the

claimant-appellant No. 1 suffered loss of consortium and claimant nos. 2 to 4 were deprived of love and affection as well as valuable guidance.. Ultimately, the learned Tribunal has held that the claimants No. 1 is entitled to get Rs. 10,000/- towards loss of consortium and claimant nos. 2 and 3 each is entitled to get compensation worth Rs. 5000/- (five thousand) towards loss of love and affection, while the learned Tribunal took compassionate view in respect of unmarried daughter of deceased, claimant no.4, thereby awarded sum of Rs. 20,000/- to her for loss of love, affection and valuable guidance. The prayer for claim under other head was not accepted by the Tribunal. The learned Tribunal has held that the amount of compensation is payable by the Insurance Company-respondent no.1. Accordingly, the claim petition was allowed, as mentioned earlier.

The only point pressed before us is that the learned Tribunal has not awarded appropriate amount of compensation for the death of the deceased Smt. Chandrawati in favour of the claimant-appellant.

We have heard learned counsel for the parties and have carefully gone through the entire material before us as well as the impugned judgment and award. It has not been disputed that the age of the deceased Chandrawati at the time of accident was about 65 years, which has been proved before the Tribunal by adducing evidence. According to the certificate dated 29.10.1990 (paper no. 21-C) issued by C.M.O. Chamoli as well as according to the Post Mortem report (paper no. 22-C), it is proved on record that the age of the deceased was 65 years. The deceased was admittedly a household wife of claimant no. 1 and as not an earning member of the family. We are of the view that the compensation awarded of Rs. 40,000/- by the learned Tribunal in the present case is just and reasonable. Having considered all the facts and circumstances of the case, in our opinion, there is no evidence to show that the impugned judgment and award suffers

from any illegality or infirmity. The entire evidence both oral and documentary on record has been elaborately considered by the learned Tribunal, therefore, we do not find any reason to interfere with the findings recorded by the learned Tribunal.

Ultimately, the appeal has no force and deserves dismissal.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

16-08-2004
RCP

(**B.S. Verma, J.**)

(**P.C. Verma, J.**)